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Before the
FEDERAL COMMUNICATIONS COMMISSION OCT - 4 1996
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace) CC Docket No. 96-61
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

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**COMMENTS OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth" or "CNMI"),¹ by its attorneys, respectfully submits its comments in response to the Federal Communications Commission's ("FCC's") Order and Order Seeking Comment, released on September 13, 1996 in the above-captioned matter.

I. INTRODUCTION

American Mobile Satellite Carriers Subsidiary Corp. ("AMSC") has requested an extension of the deadline for when it must comply with the rate integration implementation requirement under 47 U.S.C. § 254(g) of the Telecommunications Act of 1996 ("Act").²

The Commonwealth is primarily concerned that AMSC's Request, if granted, could erode

¹ These Comments are filed by the Office of the Governor on behalf of the people of the Commonwealth.

² Request for Extension of Compliance Deadline of AMSC, CC Dkt. No. 96-61 (filed Aug. 23, 1996) ("Request").

By: [Signature] 14

the FCC's rate integration rule³ as well as Congress' intent underlying Section 254(g).⁴ Granting AMSC's Request, as shown below, could establish a dangerous precedent since it can be expected to trigger a relentless stream of similar requests from other service providers which also believe that rate integration will have an adverse impact upon their revenue goals.

In addition, as shown below, the Request fails to demonstrate good cause pursuant to 47 C.F.R. § 1.3, the FCC's waiver provision. Not only does the Request appear contrary to the public interest, but it is also too vague for the FCC to make a reasoned judgment as to its validity.

II. GRANTING AMSC'S REQUEST COULD SET A DANGEROUS PRECEDENT

If the FCC grants AMSC's request, it can undoubtedly anticipate a flood of similar requests from other telecommunications carriers. Indeed, within three days of the FCC's Order and Order Seeking Comment, IT&E Overseas, Inc. ("IT&E") filed a Petition for Partial Reconsideration.⁵ In its Petition, IT&E argues, "[a]t a minimum, IT&E should receive the same type of special consideration that was given recently to AMSC."⁶ The CNMI fears that such language will appear again and again as telecommunications carriers—motivated by a desire to sustain lucrative international rates—seek to delay their compliance with rate integration.

³ In re Implementation of Section 254(g), Report and Order in CC Dkt. No. 96-61, FCC 96-331 (Aug. 7, 1996) ("Report and Order") (to be codified at 47 C.F.R. § 64.1701).

⁴ It should be noted that AMSC does not presently provide telephone service to the CNMI. AMSC defines its service territory as the mainland United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. Request at 1.

⁵ Petition for Partial Reconsideration of IT&E, CC Dkt. No. 96-61 (filed Sept. 16, 1996).

⁶ Id. at 8.

It is clear that any company that provides communications services to remote areas can make arguments about the high cost of implementing rate integration. However, it is even more clear that these carriers are the prime targets of rate integration and that the benefits of rate integration will not be fully realized until citizens of remote areas benefit from telecommunications rates at levels comparable to those elsewhere in the United States.

III. AMSC HAS NOT MET THE REQUISITE BURDEN FOR A WAIVER

AMSC seeks a waiver of the FCC's Rule implementing rate integration pursuant to Section 254(g) of the Act.⁷ In order to meet the burden of proof for such a waiver, AMSC must show "good cause."⁸ To find good cause, the FCC must first determine that "particular facts would make compliance with the underlying rule inconsistent with the public interest as expressed in the rule itself."⁹ When granting a waiver, the FCC must also be able to clearly articulate how such a waiver will serve the public interest.¹⁰ AMSC's Request appears, first, to be directly contrary to the public interest and, second, to be made in such general terms that it does not afford the FCC a basis by which to articulate how granting the Request would serve the public interest.

⁷ See supra note 3.

⁸ 47 C.F.R. § 1.3.

⁹ Denver Area Educational Telecommunications Consortium, Inc. v. TCI, et al., 10 FCC Rcd. 13746, 13749 (1995) ("Denver"), citing WAIT Radio v. FCC, 418 F.2d 1153, 1157 (1969).

¹⁰ Denver, id., citing Northeast Cellular Telephone Co., et al., v. FCC, 897 F.2d 1164 (1990). See also Rio Grande Family Fellowship, Inc. v. FCC, 406 F.2d 664 (1968), cited in WAIT Radio v. FCC, id. at 1157: "When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."

AMSC fails to address how the requested extension will benefit the public. Instead, it argues that it needs an extension because it will be expensive for it to comply with rate integration now. Rate integration, according to AMSC, "would have a serious adverse impact" on the company's ability to "achieve important revenue goals."¹¹ AMSC explains that it "charges a higher rate generally for any service that requires more power than other services" such as to areas that it serves with a lower powered beam and service to "users with relatively low-gain antennas."¹²

AMSC's request is in fact directly contrary to the public interest because it potentially seeks to delay full and prompt implementation of rate integration, thereby depriving U.S. citizens of the substantial benefits of rate integration. Specifically, the FCC has determined that rate integration will result in lower communications prices for ratepayers who are not located in the contiguous U.S.¹³ Rate integration will increase competition between interexchange carriers, leading to the adoption of new technologies, the development of new and innovative services, and improved customer service.¹⁴ Rate integration will ensure that U.S. citizens who have been denied such benefits until now will have access to the Nation's communications infrastructure.¹⁵ By arguing that it must charge higher rates for service it provides at a higher

¹¹ Request at 1.

¹² Id. at 3.

¹³ See Referral of Questions from GCI v. Alascom, Inc., 2 FCC Rcd 6479, 6480 (1987).

¹⁴ See, Integration of Rates and Services, CC Dkt. No. 83-1376, 50 Fed. Reg. 41714, 41716 (Oct. 15, 1985).

¹⁵ The Commission has recognized that non-integrated rates have "inhibited the free flow of communications between the contiguous states and these [remote] points to the disadvantage of all our citizens." Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d

cost, AMSC proves the very point it attempts to refute. It is precisely high costs, which usually translate into high rates for consumers, that necessitate rate integration and make its uniform implementation so essential.¹⁶ The goal of rate integration, after all, is to set uniform telephone rates in noncontiguous areas "comparable to those prevailing in the mainland for interexchange calls of similar distance, duration, and time of day."¹⁷ Were the FCC to issue cost-based exemptions, rate integration would quickly break down.

The Commonwealth also questions AMSC's contention that it should not be treated as a so-called "traditional" service provider because it offers Mobile Satellite Service. The method by which AMSC provides telecommunications services is irrelevant. The fact remains that AMSC provides interstate communications between the contiguous United States and points covered by rate integration and, therefore, should comply with the FCC's rate integration rules.¹⁸

In its Request, AMSC repeats an already-rejected argument that the FCC did not find its

844, 856, aff'd on recon., 38 F.C.C. 2d 665 (1972), aff'd sub nom. Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

¹⁶ The CNMI addressed cost issues at length in Reply Comments of the Commonwealth of the Northern Mariana Islands, CC Dkt. No. 96-61 (filed May 3, 1996) at 4-14.

¹⁷ Report and Order at para 47, citing In re Establishment of Domestic Communications-Satellite Facilities, Second Report and Order, 35 FCC 2d 844, 856-66 at paras. 35-36 (1972).

¹⁸ By raising numerous issues which the FCC has already addressed in its Report and Order, AMSC's Request fundamentally seeks reconsideration of that decision. As a result, such issues are more properly addressed through a petition for reconsideration. In fact, AMSC did subsequently file a petition for reconsideration with the FCC. Petition for Reconsideration of AMSC, CC Dkt. No. 96-61 (filed Sept. 16, 1996). AMSC's Petition for Reconsideration raises substantially the same issues as the Request which is the subject of the instant proceeding.

current price structure unlawful when the FCC reviewed AMSC's tariff in 1993.¹⁹ As the FCC has pointed out, it did not make a ruling on the lawfulness of AMSC's tariff through its 1993 Order. The FCC merely ruled that the tariff was "not patently unlawful."²⁰ The FCC said of the 1993 Order, "[i]t did not establish any policy of excluding AMSC services from rate integration. Accordingly, we reject AMSC's arguments on this issue."²¹

Moreover, by stating that it is seeking "a similar extension" to the one granted to the CNMI, Guam and American Samoa,²² AMSC attempts to analogize its case to the implementation schedule established for the U.S. Pacific insular areas. However, this is like comparing apples and oranges.

Rate integration will be implemented in the U.S. Pacific insular areas on August 1, 1997, to roughly coincide with the CNMI and Guam's joining the North American Numbering Plan ("NANP"), which is set to occur on July 1, 1997.²³ Although the FCC acknowledged that the two events did not have to be contingent on one-another, it stated that the two areas' inclusion within the NANP "will facilitate rate integration."²⁴ This is a special circumstance, designed

¹⁹ Request at 5, citing In re AMSC Subsidiary Corp., Order, 8 FCC Rcd. 2871 (1993) ("1993 Order").

²⁰ 1993 Order at 2871.

²¹ Report and Order at para. 54.

²² Request at 5.

²³ Report and Order at para. 68. Telecommunications carriers in the Pacific Region must submit preliminary rate-integration plans to the FCC by Feb. 1, 1997 and final plans by June 1, 1997. Id.

²⁴ Inclusion within the NANP will allow callers between the CNMI and Guam and other points in the United States to connect by dialing 1-area code rather than having to begin each call by dialing the international access codes. As the FCC notes, inclusion will also "help

to ensure the smooth transition of the Pacific Region from an international point into full membership in the NANP. Similar concerns do not play any part in AMSC's Request and, therefore, AMSC incorrectly compares the two situations.

Finally, the CNMI notes that AMSC does not specify what remedial measures it would take during its requested extension, were it granted. Nor does AMSC even discuss the length of the extension it will need to make necessary changes. AMSC simply seeks an extension for "as long as possible, but no less than one year."²⁵

In short, AMSC's Request is both contrary to the public interest and far too vague for the FCC to make a reasoned judgment on its merits.

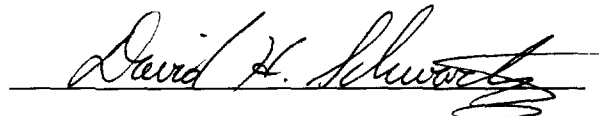
carriers integrate [the region] into their nationwide service plan." Id.

²⁵ Request at 5.

IV. CONCLUSION

For the foregoing reasons, the CNMI is opposed to a grant of AMSC's Request.

Respectfully submitted,

A handwritten signature in cursive script, reading "David H. Schwartz", is written over a horizontal line.

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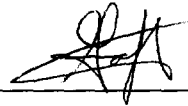
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Dated: October 4, 1996

CERTIFICATE OF SERVICE

I, Guled Hersi, serving as secretary to the Law Offices of Thomas K. Crowe, P.C., hereby certify that copies of the foregoing Comments were served by first-class mail, postage prepaid, this 4th day of October, 1996 upon all parties of record in CC Dkt. No. 96-61.

A handwritten signature in black ink, appearing to be 'Guled Hersi', is written over a horizontal line.

Guled Hersi